

MONTANA LEGISLATIVE HISTORY

Chapter 142 1993

Bill H _____ S 111

Original bill & history ☒ c

H. Committee on Bus' Ec. Dev.

Hearing Date(s) _____ c

_____ c

3/3 ☒ c

_____ c

Date Out

3/3 ☒ c

S. Committee on Bus' Industry

Hearing Date(s) _____ c

1/14 ☒ c

_____ c

_____ c

out 1/2 ☒

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

SENATE BILL NO. 111

INTRODUCED BY HARP
BY REQUEST OF THE BOARD OF REALTY REGULATION

IN THE SENATE

JANUARY 8, 1993 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & INDUSTRY.

 FIRST READING.

JANUARY 23, 1993 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

JANUARY 25, 1993 PRINTING REPORT.

 SECOND READING, DO PASS AS AMENDED.

JANUARY 26, 1993 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 41; NOES, 8.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

JANUARY 27, 1993 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & ECONOMIC DEVELOPMENT.

 FIRST READING.

MARCH 3, 1993 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 6, 1993 SECOND READING, CONCURRED IN.

MARCH 9, 1993 THIRD READING, CONCURRED IN.
AYES, 90; NOES, 7.

MARCH 10, 1993 RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 12, 1993 RECEIVED FROM HOUSE.

 SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 13, 1993

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

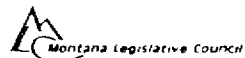
REPORTED CORRECTLY ENROLLED.

1 Senate BILL NO. 111
2 INTRODUCED BY HARP
3 BY REQUEST OF THE BOARD OF REALTY REGULATION
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A PROPERTY
6 MANAGER'S LICENSE; DEFINING "PROPERTY MANAGER" AND THE
7 PRACTICE OF PROPERTY MANAGEMENT; PROVIDING QUALIFICATIONS
8 FOR A LICENSE; PROVIDING PENALTIES; AMENDING SECTION
9 37-51-102, MCA; AND PROVIDING AN EFFECTIVE DATE."

10
11 STATEMENT OF INTENT

12 A statement of intent is required for this bill because
13 it delegates rulemaking authority to the board of realty
14 regulation to provide for the licensure and regulation of
15 real estate property managers. The legislature intends that
16 the board have general authority to adopt rules in regard to
17 licensing procedures, including but not limited to issuance
18 of licenses, administration of examinations, establishment
19 of criteria for grading of examinations, promulgation of
20 disciplinary standards for licensees, establishment of fee
21 schedules consistent with the program area costs, and
22 provisions for investigation of complaints against
23 licensees.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:



1 **Section 1.** Section 37-51-102, MCA, is amended to read:
2 **"37-51-102. Definitions.** Unless the context requires
3 otherwise, in this chapter the following definitions apply:
4 (1) "Account" means the real estate recovery account
5 established in 37-51-501.
6 (2) "Board" means the board of realty regulation
7 provided for in 2-15-1867.
8 (3) "Broker" includes an individual who:
9 (a) for another or for valuable consideration or who
10 with the intent or expectation of receiving valuable
11 consideration negotiates or attempts to negotiate the
12 listing, sale, purchase, rental, exchange, or lease of real
13 estate or of the improvements on real estate or collects
14 rents or attempts to collect rents;
15 (b) is employed by or on behalf of the owner or lessor
16 of real estate to conduct the sale, leasing, subleasing, or
17 other disposition of real estate for consideration;
18 (c) engages in the business of charging an advance fee
19 or contracting for collection of a fee in connection with a
20 contract by which he the individual undertakes primarily to
21 promote the sale, lease, or other disposition of real estate
22 in this state through its listing in a publication issued
23 primarily for this purpose or for referral of information
24 concerning real estate to brokers;
25 (d) makes the advertising, sale, lease, or other real

1 estate information available by public display to potential
2 buyers and who aids, attempts, or offers to aid, for a fee,
3 any person in locating or obtaining any real estate for
4 purchase or lease;

5 (e) aids or attempts or offers to aid, for a fee, any
6 person in locating or obtaining any real estate for purchase
7 or lease;

8 (f) receives a fee, commission, or other compensation
9 for referring to a licensed broker or salesman the name of a
10 prospective buyer or seller of real property; or

11 (g) advertises or ~~holds--himself-out-as~~ represents to
12 the public that the individual is engaged in any of the
13 activities referred to in subsections (3)(a) through (3)(f).

14 (4) "Broker associate" means a broker who associates
15 with a broker owner and does not own an interest in a real
16 estate firm.

17 (5) "Broker owner" means a broker who owns or has a
18 financial interest in a real estate firm.

19 (6) "Department" means the department of commerce
20 provided for in Title 2, chapter 15, part 18.

21 (7) "Franchise agreement" means a contract or agreement
22 by which:

23 (a) a franchisee is granted the right to engage in
24 business under a marketing plan prescribed in substantial
25 part by the franchisor;

1 (b) the operation of the franchisee's business is
2 substantially associated with the franchisor's trademark,
3 trade name, logotype, or other commercial symbol or
4 advertising designating the franchisor; and

5 (c) the franchisee is required to pay, directly or
6 indirectly, a fee for the right to operate under the
7 agreement.

8 (8) "Person" includes individuals, partnerships,
9 associations, and corporations, foreign and domestic, except
10 that when referring to a person licensed under this chapter,
11 it means an individual.

12 (9) "Property manager" includes a person who for a
13 salary, commission, or compensation of any kind engages in
14 the leasing, renting, subleasing, or other transfer of
15 possession of real estate belonging to others without
16 transfer of the title to the property, pursuant to [sections
17 2 and 3].

18 ~~(9)~~(10) "Real estate" includes leaseholds as well as any
19 other interest or estate in land, whether corporeal,
20 incorporeal, freehold, or nonfreehold and whether the real
21 estate is situated in this state or elsewhere.

22 ~~(10)~~(11) "Salesman" includes an individual who for a
23 salary, commission, or compensation of any kind is
24 associated, either directly, indirectly, regularly, or
25 occasionally, with a real estate broker to sell, purchase,

or negotiate for the sale, purchase, exchange, or renting of real estate."

NEW SECTION. Section 2. License required to manage property. It is unlawful for a person to engage in or conduct business, directly or indirectly, or to advertise as a property manager within this state without having met the qualifications for licensure as a property manager and having been granted a license by the board.

NEW SECTION. Section 3. Definition of property management -- exemptions from application. (1) An act performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of possession of real estate owned by another without transfer of the title to the real estate, except as specified in this section, constitutes the practice of property management. The provisions of this chapter do not apply to:

(a) a dependent of the owner of the real estate, as defined in 26 U.S.C. 152, on [the effective date of this act];

(b) a person who leases no more than four residential real estate units;

(c) a person acting as attorney-in-fact under a power of attorney from the owner of real estate who authorizes the final consummation of any contract for the renting or leasing of the real estate. This exemption is meant to

exclude a single or irregular transaction and may not be routinely used to escape the necessity of obtaining a license.

(d) an attorney at law in the performance of duties as an attorney;

(e) a receiver, trustee in bankruptcy, personal representative, person acting in regard to real estate pursuant to a court order, or a trustee under a trust agreement, deed of trust, or will;

(f) an officer of the state or any of its political subdivisions in the conduct of official duties; or

(g) a person acting as a manager of a housing complex for low-income individuals subsidized either directly or indirectly by the state, any agency or political subdivision of the state, or the government or an agency of the United States.

(2) A licensed real estate broker on active status or a licensed real estate salesman on active status and acting under the supervision of a real estate broker may act as a property manager without meeting any qualifications in addition to those required for licensure as a real estate broker or real estate salesman.

NEW SECTION. Section 4. Qualification of property manager applicants -- examination -- form of licenses. (1) The board by rule shall require an applicant for licensure

to provide information that the board believes is necessary to ensure that a person granted a property manager license is of good repute and competent to transact the business of a property manager in a manner that safeguards the welfare and safety of the public.

(2) (a) The board shall require an applicant for a property manager license to:

(i) apply for licensure to the department;

(ii) furnish written evidence that the applicant has completed the number of classroom hours that the board determines appropriate in a course of study approved by the board and taught by instructors approved by the board; and

(iii) satisfactorily complete an examination dealing with the material taught in the course of study.

(b) The course of study must include the subjects of real estate leasing principles, real estate leasing law, and related topics.

(3) Examinations must be given at least once every 4 months at places within the state that the board prescribes. The board shall establish by rule the contents of and requirements to pass the examination.

(4) An applicant for licensure as a property manager must be at least 18 years of age and must have graduated from an accredited high school or completed an equivalent education as determined by the board.

(5) The board shall prescribe the form of the license, and the license must bear the seal of the board. A property manager shall display the license conspicuously in the property manager's place of business.

(6) The department shall prepare and deliver annually to the licensee a pocket card in a form prescribed by the board.

NEW SECTION. Section 5. Annual renewal -- continuing education -- fees. (1) Annual fees for renewal of the property manager license are due and payable during the month of October. Failure to remit the annual fee before November 15 automatically cancels the license. The board shall establish by rule penalty fees for late renewals.

(2) The board shall prescribe by rule requirements for continuing education that applicants shall satisfy before they are allowed to renew their licenses.

(3) The fees prescribed by the board must be charged by the department and paid into the state special revenue fund for the use of the board, subject to 37-1-101(6).

NEW SECTION. Section 6. Property manager's office -- notice of change of address. A property manager shall maintain a fixed office in this state at which the original license of the property manager must be prominently displayed. The office manager must be designated on the license. If the property manager changes the location of the

office, the property manager shall notify the department of the new address within 10 days after the change of address.

NEW SECTION. Section 7. Revocation, suspension, or denial of license -- initiation of proceedings -- grounds.

(i) The board may on its own motion and shall, on the sworn written complaint of a person, investigate the actions of a property manager licensee, subject to 37-1-101 and 37-1-121. The board may revoke or suspend a license, place the licensee on probation, issue a letter of censure or reprimand to the licensee, or levy a fine in an amount not to exceed \$5,000, proceeds of which must be placed in the state general fund, if the licensee:

(a) is guilty of fraud or deceit in procuring or attempting to procure a license;

(b) is unfit or incompetent by reason of negligence, habit, or other causes;

(c) has demonstrated unworthiness, incompetency, or lack of honesty;

(d) is guilty of unprofessional conduct as defined by regulations prescribed by the board; or

(e) has willfully or repeatedly superseded the authority of the license by selling or attempting to sell real property or otherwise has willfully or repeatedly violated [sections 2 through 9].

(2) The board may deny an application for licensure if

the applicant:

(a) made untrue or fraudulent statements in support of the application;

(b) failed to meet the requirements stated in [section 4] for licensing; or

(c) violated any of the grounds set forth in this section, that would be grounds for suspension or revocation of a license if a license had already been issued.

NEW SECTION. Section 8. Transactions with nonlicensed persons unlawful -- action for compensation limited to licensees. (1) It is unlawful for a licensed property manager to employ or compensate, directly or indirectly, a person who is not a licensed property manager for performing the acts regulated by [sections 2 through 9].

(2) An action may not be brought or maintained in the courts for the collection of compensation for the lease of real estate unless the plaintiff first alleges that the plaintiff was licensed or was authorized to act without a license at the time the alleged cause of action or claim arose.

NEW SECTION. Section 9. Penalties -- criminal -- civil. (1) A person who acts without a license or while a license is suspended or revoked or who violates any provision of [sections 2 through 9] is guilty of a misdemeanor. For a first conviction, the person shall be

1 punished by a fine of not less than \$100 or more than \$500
2 or by imprisonment for a term not to exceed 90 days, or
3 both. Upon conviction of a second or subsequent offense, the
4 person shall be punished by a fine of not less than \$500 or
5 more than \$2,000 or by imprisonment for a term not to exceed
6 6 months, or both.

7 (2) If a person is determined in a civil action to have
8 received any money or the equivalent as a fee, commission,
9 or other compensation while violating the provisions of
10 [sections 2 through 9], the person is also liable for a
11 penalty of not less than the amount received and not more
12 than three times the amount received, as the court may
13 determine.

14 NEW SECTION. **Section 10.** Codification instruction.
15 [Sections 2 through 9] are intended to be codified as an
16 integral part of Title 37, chapter 51, and the provisions of
17 Title 37, chapter 51, apply to [sections 2 through 9].

18 NEW SECTION. **Section 11.** Effective date. [This act] is
19 effective July 1, 1993.

-End-

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON BUSINESS & INDUSTRY

Call to Order: By J.D. Lynch, Chair, on January 14, 1993, at
10:00 a.m.

ROLL CALL

Members Present:

Sen. J.D. Lynch, Chair (D)
Sen. Chris Christiaens, Vice Chair (D)
Sen. Betty Bruski-Maus (D)
Sen. Delwyn Gage (R)
Sen. Tom Hager (R)
Sen. Ethel Harding (R)
Sen. Ed Kennedy (D)
Sen. Terry Klampe (D)
Sen. Francis Koehnke (D)
Sen. Kenneth Mesaros (R)
Sen. Doc Rea (D)
Sen. Daryl Toews (R)
Sen. Bill Wilson (D)

Members Excused: None.

Members Absent: None.

Staff Present: Bart Campbell, Legislative Council
Kristie Wolter, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 111
Executive Action: SB 83

HEARING ON SB 111

Opening Statement by Sponsor:

Senator Harp, Senate District 4 opened on SB 111 stating its purpose is to create a Property Management License. On page 5, section 3, Line 39, exemptions to SB 111 are listed. Senator Harp stated 45% of all residential rentals are being managed through property management. Concern has arisen with mishandling of income from the rentals. Senator Harp supplied a letter from Whitefish Property Management which stated support of SB 111 and

outlined reasons behind their support (Exhibit #1). Problems have also shown up in continuing education credits which brokers are required to have; however, none of these credits apply to the real estate field. Real estate salesmen and real estate brokers aren't well versed on the Montana Landlord and Tenant Act, whereas people who are professional property managers do understand the act. What SB 111 asks for is the ability for certain people, exclusive of the exemptions, to be licensed, educated and protected as licensed property managers.

Proponents' Testimony:

Marcia Allen, Member of the Board of Realty Regulation spoke from and supplied prepared testimony in support of SB 111 (Exhibit #2).

Helen Garrick, member of Board of Realty Regulation stated her support of SB 111 because she felt people who are licensed in property management are not interested in listing and selling properties and, in most cases, do not mix selling and management. The Board no longer has the ability to give management licenses because of a rule change. SB 111 specifies the specific area of property management which can be conducted without having a broker's license. Exclusions concerned are listed explicitly in SB 111. Ms. Garrick closed by stating she urged the support of the Committee.

George Bennett, Montana Bankers Association, came forth in his support of SB 111 but proposed an amendment. Mr. Bennett stated SB 111 exempted dependents. This exemption would make every desk clerk in Montana in violation of the current statute. Mr. Bennett asked SB 111 be amended to exempt employees and dependents.

Tom Hopgood, Montana Association of Realtors supported SB 111.

Mardi Madson, Property Manager with Prudential Realtors, stated her support of SB 111. Ms. Madson felt SB 111 was very important in order to give her profession credibility. She added there needs to be a separate designation for property managers and special education required.

Jack Moore, Chairman Board of Realty Regulation stated SB 111 is absolutely necessary in order to solve the problems with property management. He felt SB 111 is refined to meet the requirements of the business. One unlicensed person cost the recovery account over \$14,000.00. The Board intends to license, train, and continue to educate the property managers. Mr. Moore asked the Committee to look favorably upon SB 111.

Opponents' Testimony:

Dan Walker, U.S. West stated he would like to make some

amendments with regards to how employees are defined in SB 111.

Greg VanHorsen, representing Income Property Managers Association of Montana and Montana Landlords Association spoke from prepared testimony in opposition to SB 111. (Exhibit #3)

Rhonda Carpenter, Legislative Chair Income Property Owners and Managers Association of Great Falls stated she stood for SB 111 in its intent, but felt SB 111 is vague and the definition of "dependents" needs to be clarified. She asked the Committee to give SB 111 a Do Not Pass recommendation.

Vern Fisher, representing Montana Landlords Association, stated his concern with SB 111 and mobile home park managers. He asked the Committee to give a Do Not Pass to SB 111.

Rick Linafelter, representing Income Property Managers, Montana Landlord Association and a licensed contractor, stated the passage of SB 111 would greatly inhibit landlords and asked the Committee to give a Do Not Pass recommendation.

Informational Testimony:

Nancy Griffin asked what effect SB 111 would have on an absentee property owner has a supervisor on construction on their property who also supervises other components of the property such as land leasing, access, etc. Helen Garrick answered the above situation would be deemed exempt.

Questions From Committee Members and Responses:

Senator Rea asked Helen Garrick what the Boards' feelings were on the employee provision of SB 111. Ms. Garrick answered the Board was willing to work with the employee situation as long as it didn't make a loophole.

Senator Koehnke asked Marcia Allen about a friend managing condominiums who doesn't want to be a real estate broker. Ms. Allen answered the friend must apply for a real estate brokers license under the current law but under SB 111 the friend could apply for a property management license.

Senator Klampe asked Helen Garrick why a realtor would be exempt from having a license as a manager. Ms. Garrick answered a realtor would have some training in property management, but not be able to keep up with current legislation. A property manager would be able to concentrate strictly on management and would keep up on legislation. SB 111 would not prohibit brokers from managing. Senator Klampe asked if it would not be possible to grandfather in people who are already working as managers and realtors, and make the law state a realtor would have to pass the same requirements as a property manager would. Ms. Garrick responded the House and Senate are not fond of grandfather clauses.

Senator Gage asked how many additional people would be brought into the requirement in the state. Senator Harp stated the estimate was 250 with 30 each year thereafter for an unspecified period of time. Senator Gage then asked for an estimate on how many people were in current violation of the statute. Ms. Garrick answered there were 2 or 3 complaints a month. Senator Gage inquired about bonding requirements in SB 111. Ms. Garrick answered the realtors and brokers are no longer bonded, but there is a recovery fund which covers any losses. Referring to page 5, subsection A, Senator Gage asked what would happen if the definition of dependent were changed after the effective date of SB 111. Ms. Garrick replied the above situation would be handled with the rule change. Senator Gage inquired about classroom time and examinations on page 7 and what would happen if a person could pass the exam without the classroom time. Ms. Garrick explained there would be equivalency tests and the ability to challenge classes.

Senator Gage addressed Jack Moore asking if there were any other boards which have the ability to fine or revoke licenses. Grace Berger, Department of Commerce, replied there are several boards who have fining authority. Senator Gage stated he assumes the Board would determine if a person was unfit, negligent or incompetent and if the person's license was going to be revoked or if they were going to be fined. Senator Moore stated any person in violation of the statute would go through the same process as any broker or real estate associate.

Senator Lynch asked why a desk clerk at a hotel is not in present violation of the law, or would be in violation of SB 111 if it were passed. There was no response.

Senator Klampe asked about section 3, part G and why a manager of a complex subsidized by the government is exempt. Ms. Garrick responded the exemption is a federal regulation.

Senator Rea asked Helen Garrick if a property manager would become an independent contractor. Ms. Garrick answered the decision was up to the companies which hired the managers. Senator Rea inquired about the test requirements to be a property manager. Ms. Garrick stated the tests are readily available at the Job Services throughout the state.

Senator Mesaros asked Rhonda Carpenter about her testimony and if she could be specific about points in the bill she felt needed to be changed. Ms. Carpenter stated the definition of dependent needed to include immediate family, or changed to relative. Another point she would like to see changed is the definition about managing for more than one person or identity and the definition of "on-site manager".

Senator Wilson asked Ms. Carpenter if he owned 5 units and his parents were watching them for him, if his parents would have to be licensed, or could he be licensed to handle the units from

Helena. Ms. Carpenter answered he wouldn't be in violation if he took care of them himself, but if his parents showed or managed them he would be in violation of the current statute.

Senator Christiaens inquired of Ms. Garrick if a person has 2 or 3 units under Section 8 housing (HUD housing), would the housing be exempt. Ms. Garrick answered yes. Senator Christiaens stated the passage of SB 111 would tell people to make sure they had Section 8 housing or HUD rentals to get around the law. Ms. Garrick responded the Section 8 housing is examined and monitored closely by the federal government. Senator Christiaens stated he wasn't sure of the necessity of SB 111 except for the Board's access to the managers' trust accounts. Ms. Garrick stated the reason for SB 111 was for consumer protection if a property manager were to leave with funds and to make the managers follow standards of practice. Senator Christiaens asked if there were any way the current statute could be amended rather than propose a new law. There was no response.

Senator Lynch asked Senator Harp about the present and proposed law and how much education is necessary for a management position in, for example, a hunting lodge where rents are collected. Senator Harp stated, in the example given, SB 111 is proposing more than is necessary, but the idea behind SB 111 is for professional property managers who would like to hold themselves as managers. Senator Lynch then asked Senator Harp if there was a way the present law could be changed so any person who purports themselves to be a professional property manager could attain a license. Senator Harp agreed with Senator Lynch.

Senator Toews inquired as to the penalties under the current statute. Ms. Garrick answered she believed it was treble damages.

Senator Rea asked Senator Harp if there was a way SB 111 could work in employees or work the language into the current bill. Senator Harp responded the Committee could handle the problem and he would be willing to work with the Committee in the matter.

Senator Gage asked Greg VanHorsen how much contact with the Board of Realty Regulation did the Income Property Managers Association of Montana have. Mr. VanHorsen deferred to Rhonda Carpenter. Rhonda responded the contact was minimal.

Closing by Sponsor:

Senator Harp closed on SB 111 stating there is some confusion on the present law and the intent of SB 111. He also brought to the attention of the Committee that the Legislative Audit Committee Sunrise Report on the 1993 biennium noted Property Managers as a new career field in Montana. Senator Harp asked the Committee to try and resolve some of the problems brought up in the hearing.

Announcement:

Chair Lynch announced he would like recommendations as to how to handle SB 111. He asked the interested parties to submit amendments as a whole Committee, and if there was still no resolution, he would call a subcommittee.

EXECUTIVE ACTION ON SB 83

Discussion:

Mr. Hopgood suggested an amendment on SB 83 to eliminate "such as". Bart Campbell announced that page 1 line 23, section 2 would now read as follows:

Delete line 23 and "such as". It would now read "a private or public employment agency or labor union or an employee thereof who refers persons for employment by others."

Mr. Campbell added that there were also the Department's amendments.

Motion/Vote:

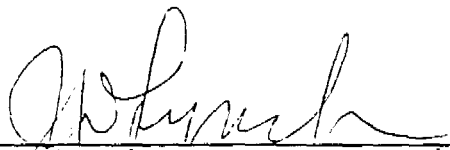
Senator Bruski-Maus moved SB 83 BE AMENDED. MOTION CARRIED UNANIMOUSLY.

Motion\Vote:

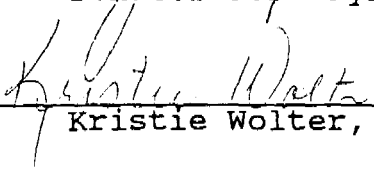
Senator Mesaros moved SB 83 DO PASS AS AMENDED. MOTION CARRIED UNANIMOUSLY.

ADJOURNMENT

Adjournment: 10:55 a.m.



Senator J.D. Lynch, Chair



Kristie Wolter, Secretary

ROLL CALL

SENATE COMMITTEE Business & Industry

DATE Jan. 14, 1993

NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	/		
Senator Christaens	/		
Senator Bruski-Maus	/		
Senator Gage	/		
Senator Hager	/		
Senator Harding	/		
Senator Kennedy	/		
Senator Klampe	/		
Senator Koehnke	/		
Senator Mesaros	/		
Senator Rea	/		
Senator Toews	/		
Senator Wilson	/		

WHITEFISH PROPERTY MANAGEMENT

128 CENTRAL AVENUE WHITEFISH, MONTANA 59937
(406) 862-2578

Date: January 13, 1993

To: Whom it may concern

From: Whitefish Property Management
128 Central Ave.
Whitefish, MT 59937

Subject: Senate Bill 111 - Property Management Licensing

The owners of Whitefish Property Management would like to voice a proponent "yes" vote on the Senate Bill 111. As full time property managers, we would like to site several reasons this bill is needed in our industry.

1. Presently the Montana Real Estate Board requires 15 hours of continuing education every two years to keep an active Real Estate License. I have now attended three of these seminars with not one hour pertaining to property management. It is a catch 22. Mandatory to maintain my license yet no educational benefit in my field.

2. Two of the three partners have held salesperson licenses for 8 years, the third being as required by law "the Broker". This is merely a token position in the property management business, as we have never had to call on "the Broker" to make any decisions or supervision except when the law dictated. The other property managers, as salesperson, are equally qualified to make decisions. The Montana Landlord and Tenant Act being our guideline.

3. After 8 years in the property management business I cannot without the aid of a broker operate my own business according to the Montana Law. As owner of the business, I would have to hire a "Broker" to supervise my operation. Yet this broker would have much less knowledge of the property management operation, than individuals that have worked full time for over seven years.

4. Lastly, after 8 years in the business I fail to qualify to take a brokers license test, as I have not made any sales. Even if qualified to take the test, about 90% of the material is related to sales and just a small portion property management.

Thank you for your time,



1/14/93
SB 111

MR. CHAIRMAN, MEMBERS OF THE COMMITTEE, I AM SPEAKING TODAY IN SUPPORT OF SENATE BILL 111. THE MEMBERS OF THE BOARD OF REALTY REGULATION HAVE ATTEMPTED TO WORK WITHIN THE CONFINES OF THE CURRENT LAW WHICH REQUIRES A PROPERTY MANAGER TO HOLD A REAL ESTATE BROKER LICENSE, WHILE REMAINING CONSISTENT WITH THE LEGISLATIVE CHARGE OF PROTECTION OF THE PUBLIC.

WITHIN THE PAST TWO YEARS, THE BOARD OF REALTY REGULATION HAS RECEIVED REQUESTS FOR A BROKER LICENSE FROM 13 INDIVIDUALS INTENDING TO LIMIT THEIR OPERATIONS TO PROPERTY MANAGEMENT. THE BOARD HAS THE ABILITY TO ALLOW FULL UNRESTRICTED LICENSING TO THESE INDIVIDUALS, OR DENY THE REQUEST ENTIRELY. THERE IS NO RESTRICTION THAT CAN CURRENTLY BE PLACED ON THESE INDIVIDUALS WHO DO NOT HAVE LISTING OR SELLING EXPERIENCE OR ON OCCASION, HAVE NO PROPERTY MANAGEMENT EXPERIENCE. THE BOARD, IN GOOD CONSCIENCE, WILL NOT ALLOW A PERSON TO OBTAIN AN UNRESTRICTED BROKER LICENSE WITHOUT MEETING THE MINIMUM LISTING AND SELLING REQUIREMENTS.

MORE ALARMING IS THE NUMBER OF UNLICENSED BUSINESSES CURRENTLY IN OPERATION. THIS PAST FALL THE BOARD CONTACTED 75 BUSINESSES ADVERTISING IN THE YELLOWPAGES AS PERFORMING PROPERTY MANAGEMENT SERVICES. OF THOSE CONTACTED, A FULL 1/3 OF THOSE BUSINESSES WERE NOT RAN BY A LICENSED REAL ESTATE AGENT, OR CONNECTED WITH A LICENSEE IN ANY FASHION.

THESE UNLICENSED, UNREGULATED BUSINESSES ARE UNDER NO REGULATION, AND DO NOT HAVE TO SUBMIT TO PERIODIC TRUST ACCOUNT AUDITS. THIS AUDIT PROGRAM IS RAN IN CONJUNCTION WITH THE INVESTIGATIONS FOR THE PROFESSIONAL & OCCUPATIONAL LICENSING BUREAU AND ARE COMPLETED AT THE REQUEST OF THE BOARD.

2
1/14/92
SB III

UNDER THE CURRENT STATUTE, THE BOARD OF REALTY REGULATION CAN DEMAND LICENSING OF THESE BUSINESSES. THE PROBLEM COMES FROM THE TYPE OF EXPERIENCE AND EDUCATION THESE PEOPLE ARE REQUIRED TO OBTAIN. THEY MUST COMPLETE 60 HOURS OF EDUCATION DESIGNED TO TEACH THE PRINCIPLES AND PRACTICES OF THE LISTING AND SELLING AGENT. A BRIEF OVERVIEW OF PROPERTY MANAGEMENT SUBJECTS ARE COVERED, BUT NO IN-DEPTH STUDY OCCURS. THEY MUST ALSO MEET CERTAIN LISTING AND SELLING REQUIREMENTS IN ORDER TO QUALIFY FOR A BROKER LICENSE. PROPERTY MANAGERS DO NOT HAVE THE OPPORTUNITY OR THE DESIRE TO MEET THESE REQUIREMENTS. THEY ARE CONCENTRATING THEIR EFFORTS IN PROPERTY MANAGEMENT. EVEN IF THEY OBTAIN A SALES LICENSE AND ARE LUCKY ENOUGH TO FIND A BROKER TO SUPERVISE THEM, THEY WILL NEVER MEET THE MINIMUM LISTING AND SELLING REQUIREMENTS.

THE BOARD DOES NOT HAVE THE RESOURCES TO OBTAIN INJUNCTIONS AGAINST ALL THOSE OPERATING UNLAWFULLY AS A PROPERTY MANAGER. IT HAS BEEN THE EXPERIENCE OF THE BOARD THAT THE OVERWORKED AND UNDERSTAFFED COUNTY ATTORNEY IS NOT INTERESTED IN PURSUING LEGAL ACTION AGAINST AN UNLICENSED PROPERTY MANAGER.

IT IS TRUE THAT THIS LEGISLATION DOES NOT GIVE THE BOARD ANY ADDITIONAL JURISDICTION OVER UNLICENSED PRACTICE. WHAT THIS LEGISLATION DOES IS PLACE MEANINGFUL REQUIREMENTS ON PROFESSIONALS. THE MAJORITY OF PROPERTY MANAGERS THAT WE HAVE TALKED WITH ARE NOT OPPOSED TO LICENSING. THEY ARE OPPOSED TO JUMPING THROUGH HOOPS, AND MEETING EDUCATION, TESTING AND EXPERIENCE REQUIREMENTS THAT HAVE LITTLE CONNECTION TO THEIR DAILY BUSINESS, AND DO NOT RECOGNIZE THE SKILLS AND KNOWLEDGE NEEDED TO PERFORM THOSE DAILY ACTIVITIES.

Sen B + J
Ex #2
1/14/93
SB 111

(3)

SOME CRITICISM HAS ARISEN THAT THIS LEGISLATION DOES NOT EXEMPT EMPLOYEES OF AN OWNER OF PROPERTY FROM THE LICENSING REQUIREMENT. THESE EMPLOYEES ARE REQUIRED TO HOLD A REAL ESTATE LICENSE NOW. THE DIFFERENCE IS, THEY WOULD BE REQUIRED TO HOLD A LICENSE IN THE PROFESSION FOR WHICH THEY FUNCTION.

PAST CONCERNS OF THIS LEGISLATION HAS RESULTED IN SOME LICENSING EXEMPTIONS. THIS BILL DOES INCLUDE EXEMPTIONS FOR THOSE MANAGING FOUR OF FEWER RESIDENTIAL UNITS. ALL COMMERCIAL PROPERTY MANAGEMENT WOULD REQUIRE A LICENSE. FAMILY MEMBERS AS DEFINED BY THE IRS WOULD BE EXEMPT FROM THE LICENSING REQUIREMENT.

THIS LEGISLATION IS DIRECTED AT THOSE WHO ACT AS PROPERTY MANAGERS AS A LIVELIHOOD. THIS BILL DOES NOT CHANGE THE DUTIES OF A LICENSED REAL ESTATE BROKER. IT DOES NOT TOUCH THE PROPERTY OWNER. THIS LEGISLATION WOULD BECOME AN INTEGRAL PART OF THE REAL ESTATE LICENSING LAW. THE DEFINITION OF A PROPERTY MANAGER IS A PERSON WHO PERFORMS MANAGEMENT DUTIES "FOR A SALARY, COMMISSION OR COMPENSATION" AND ENGAGES IN MANAGEMENT ACTIVITIES "OF REAL ESTATE BELONGING TO OTHERS"

PROPERTY MANAGEMENT IS BECOMING BIG BUSINESS IN MONTANA. INVESTMENT PROPERTIES, COMMERCIAL UNITS AND ABSENTEE OWNERS ARE CREATING MORE DEMAND FOR THIS SERVICE. FEW REAL ESTATE LICENSEES HAVE THE TIME OR DESIRE TO BECOME AN EXPERT IN BOTH THE LISTING AND SELLING, AND THE MANAGEMENT OF REAL ESTATE. MONTANA IS NOT ALONE IN PURSUING THE SEPARATE LICENSE CONCEPT AS A MEANS OF SOLVING THIS REGULATORY DILEMMA. CURRENTLY FOUR STATES AND TWO CANADIAN PROVINCES HAVE A SEPARATE LICENSE FOR PROPERTY MANAGEMENT. SEVERAL MORE STATE ARE PRESENTLY ATTEMPTING SUCH LEGISLATION.

THE CURRENT SYSTEM IS IN DIRE NEED OF REPAIR. THE BOARD OF REALTY REGULATION HAS ATTEMPTED TO OPERATE UNDER THE PARAMETERS ESTABLISHED BY THE LEGISLATURE AND HAS MET WITH MIXED SUCCESS. IN TODAYS RAPIDLY CHANGING REAL ESTATE INDUSTRY, WE CAN NO LONGER ALLOW THE LAWS OF YESTERDAY TO DICTATE THE REGULATION OF THE PROFESSION OF TOMORROW.

3
1/14/93
SB 111

TESTIMONY OF SENATE BILL 111
ON BEHALF OF
INCOME PROPERTY MANAGERS ASSOCIATION AND
THE MONTANA LANDLORDS ASSOCIATION

Senate Bill 111 heard January 14, 1993,
before the Senate Business and Industry Committee,
Room 410, 10:00 a.m.

My name is Greg Van Horssen. I represent the Income Property Managers Association and The Montana Landlords Association. The Income Property Managers Association currently has 114 members, representing over 3700 rental units, and the Montana Landlords Association has approximately 1270 members, representing approximately 50,000 rental units. These organizations provide a large number of Montana's citizens with safe and affordable rental housing.

The Income Property Managers Association and the Montana Landlords Association oppose Senate Bill 111 because the bill, in its current form, is extremely vague with respect to the actual requirements for licensure.

In particular, the bill requires that any person who "manages" rental properties must be licensed with a few exceptions. However, the bill does not delineate precisely what is meant by the term "property management." In section 2, it provides that a license is required for anyone who conducts business directly or indirectly as a property manager. The bill then defines property management as "any acts performed for compensation of any kind in the leasing, renting, subleasing, or other transfer of properties without

the transfer of title." These two sections combined provide that licensure is apparently required for anyone who is indirectly involved in the leasing, renting, subleasing, or other transfer of possession of real estate without the transfer of title. Sections 2 and 3 are unreasonably vague in this regard because it is unclear as to exactly how involved an individual must be in the rental process before licensure is required.

I offer an example for your consideration: The owner of an apartment building allows a relative, for instance, a sister, brother-in-law, cousin, etc., to live in one of the apartments at a reduced rental rate. This, of course, could be considered "compensation" under the language of the bill in satisfying the first prong of the definition of property management. Now, let's say that the owner of that apartment building must be away from the apartment building for an extended period of time by virtue of military commitments, business commitments, or other responsibilities. At that point, the owner of the apartment building may, and logically would, ask the resident-family member to address any problems that may arise in the building while the owner is absent. For instance, the owner may ask the family member to show any vacant apartments to prospective tenants or to supervise or take part in any way in the re-renting of any vacated apartments. Under the language of Senate Bill 111, the owner of the apartment building, in this situation,

would be required to either license his or her relative which, of course, could include the completion of any number of classroom hours and the completion of various examinations. The alternative to the apartment owner under these circumstances would be to go out and hire a licensed property manager at some expense.

The situation where an apartment building owner or property manager is required to be away from his or her property for an extended period of time occurs with some regularity. To require that property manager to either license a relative who is providing temporary assistance or perhaps an employee who might be providing temporary assistance would be an unwarranted burden and expense. Further, the additional expenses incurred by the property manager under these circumstances would most likely lead to increased rental rates, which would be a disservice to Montana's citizens.

For these reasons, the Income Property Managers Association and the Montana Landlords Association oppose Senate Bill 111 and request that this committee issue a DO NOT PASS recommendation.

Thank you.

Legislative Audit Committee

State of Montana

Report to the Legislature

December 1992

Sunrise Report -- 1993 Biennium

Summary of Sunrise Proposals for the Licensure of:

- ▶ Crematoriums and Crematory Technicians
- ▶ Clinical Laboratory Science Practitioners
- ▶ Property Managers
- ▶ Denturists

Direct comments/inquiries to:
Office of the Legislative Auditor
Room 135, State Capitol
Helena, Montana 59620

SENATE BUSINESS & INDUSTRY
EXHIBIT NO. 4
DATE 1/14/93
BILL NO. 5B 111

93SP-11

Legislative Audit Committee

Montana State Legislature

Room 135, State Capitol
Helena, MT 59620
(406) 444-3122

SENATE MEMBERS

Senator Greg Jergeson, Chair
Senator Eve Franklin
Senator Lorents Grosfield
Senator Tom Keating

HOUSE MEMBERS

Representative John Cobb, Vice-Chair
Representative Larry Grinde
Representative Mike Kadas
Representative Robert Pavlovich

December 1992

The 53rd Montana State Legislature:

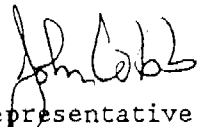
This report is in response to the Sunrise law which requires the Legislative Audit Committee to evaluate qualifying proposals to establish new professional or occupational licensing programs. The Committee must also review proposals to transfer licensing programs between existing licensing boards. During the 1993 Biennium, the Committee evaluated proposals to establish licensing programs for crematoriums and crematory technicians, clinical laboratory science practitioners, and property managers. The Committee also evaluated a proposal to transfer the regulation of denturists from the Board of Dentistry to the Alternative Health Care Board.

Section 2-8-203, MCA, requires the Committee to report to the legislature on its recommendations as to whether each of the professions or occupations should be licensed by the state. The Committee is to include in the report its estimates of the costs of each licensing program and a schedule of fees to recover these costs. The Committee's recommendations are shown on page 2. The Committee's estimates for costs and fees are shown on page 3.

Respectively submitted,



Senator Greg Jergeson, Chairman
Legislative Audit Committee



Representative John Cobb, Vice Chairman
Legislative Audit Committee

Sen B & J
Ex # 4
1/14/93
SB 111

Legislative Audit Committee
SUNRISE -- 1993 BIENNium

Introduction

The intent of the Sunrise Law (Chapter 266, Laws of Montana 1987) was to improve the legislature's ability to evaluate the need for new professional and occupational licensing programs. Under this law, the Legislative Audit Committee is required to evaluate any qualifying proposal to: 1) establish a new licensing board; 2) add another occupation or profession to an existing board; 3) consolidate any existing licensing boards; or 4) transfer a licensing program between existing licensing boards.

In order for a proposal to qualify for review, the applicant must submit the proposal in the form of a report to the Legislative Audit Committee at least 180 days before the start of the legislative session. The report must provide information to the Committee related to the need for licensure and how the proposed board will operate. For consolidation or transfer proposals the report must describe the benefits of the proposal. Each proposal must include an application fee.

After the Legislative Audit Committee receives the completed report and application fee, the Committee will hold a public meeting to consider the report. The Committee hears testimony from the applicant and any other interested parties. The Committee considers information presented in the applicant's report and testimony given at the public hearing to make its recommendation as to whether the profession or occupation should be licensed. For consolidation or transfer proposals the Committee can recommend the legislature adopt the proposal or adopt some modification of the proposal. Section 2-8-203, MCA, requires the Committee to make its recommendation in a report to the legislature for its next regular session. The report must also include an estimate of the cost to the state for each of the licensing programs along with a proposed schedule of fees that will recover the costs of each program.

Public Hearings

On October 19, 1992, the Legislative Audit Committee heard testimony concerning proposals to license crematoriums and crematory technicians and clinical laboratory science practitioners. On November 20, 1992, the Committee heard testimony concerning a proposal to license property managers and a proposal to transfer regulation of denturists to the Alternative Health Care Board. The Committee voted on its recommendations for the first two proposals at its November meeting. Final Committee action related to Sunrise was taken at the Committee's meeting on December 21, 1992.

The following is a summary of Committee action and recommendations for the four professions which went through the Sunrise process

Sun D R L
Exhibit #4
1-14-93
SB-111

SUNRISE PROPOSALS -- PROJECTED EXPENDITURES AND REVENUES

Profession	-----Expenditures-----		-----Revenues-----					
	1st Year	2nd Year	Fee Types	Fee Amounts	No of 1st yr	Amount 1st yr	No of 2nd Yr	Amount 2nd Yr
*****	*****		*****					
Clinical	\$27,615	\$25,700	Application	\$35	900	\$31,500	10	\$350
Laboratory			License	\$10	900	\$9,000	10	\$100
Practitioners			Temp. Permit	\$100	10	\$1,000	10	\$1,000
			Renewal	\$30	0	\$0	900	\$27,000
			Late Renewal	\$30	0	\$0	50	\$1,500
						-----		-----
					Total	\$41,500		\$29,950
-----	-----		-----					
Crematoriums	\$1,932 *	\$1,632 *	Crematory App	\$100	13	\$1,300	0	\$0
			Crematory Renew	\$100	0	\$0	13	\$1,300
			Technician App	\$60	5	\$300	0	\$0
			Technician Renew	\$60	0	\$0	5	\$300
						-----		-----
					Total	\$1,600		\$1,600
-----	-----		-----					
Property	\$19,958 *	\$7,293 *	Applic & Exam	\$40	250	\$10,000	30	\$1,200
Managers			License	\$40	250	\$10,000	30	\$1,200
			Renewal	\$20	0	\$0	250	\$5,000
						-----		-----
					Total	\$20,000		\$7,400

* Additional costs for licensing a new profession under an existing board

Note: Denturists are not shown since the Legislative Audit Committee did not recommend a change in the regulation of denturists.

during the 1993 biennium. Also presented are the Committee's estimates on projected costs for each of the licensing proposals and the estimated fees to cover those costs.

Clinical Laboratory Science Practitioners

A motion was made by Senator Svrcek to recommend licensure for clinical laboratory science practitioners. The motion carried with a unanimous vote.

Crematoriums and Crematory Technicians

A motion was made by Representative Pavlovich to recommend licensure for crematoriums and crematory technicians. The motion carried with a 7 - 0 vote and one abstention.

Denturists

A motion was made by Representative Pavlovich to not recommend the transfer of regulation of denturists from the Board of Dentistry to the Alternative Health Care Board. The motion carried with a unanimous vote.

Committee discussion after this motion indicated the applicant may bring other alternatives before the 1993 Legislature.

Property Managers

A motion was made by Representative Kadas to recommend licensure for property managers. The motion carried with a unanimous vote.

Licensing Program Costs and Fees

The Committee and the Department of Commerce reviewed the cost information provided by the applicants. The Committee believes the final figures are reasonable estimates of the yearly costs for the new licensing programs. To cover the costs of these new programs, the applicants and department staff estimated the necessary licensing fees. The Committee believes the fees presented in the following chart are reasonable and will comply with section 37-1-134, MCA, which requires fees to be commensurate with costs.

NAME mardi madsen

ADDRESS 3524 Glenfionnan Rd. Billings, MT

HOME PHONE 248-4021 WORK PHONE 259-6435

REPRESENTING Prudential #10bug Realtors Property Management Group

APPEARING ON WHICH PROPOSAL? SB111

DO YOU: SUPPORT X OPPOSE AMEND X

COMMENTS:

I am in favor of SB111. I feel a property management license would give credibility, and a level of professionalism to the profession.

I do feel salespersons or brokers working in the property management field should be required to hold a property management license and take the necessary course work. Sales and management are two different fields.

How many discrimination suits can be avoided when a qualified licensed property manager handles a property? Someone who is educated in ADA and equal housing laws.

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE Jan. 14, 1993
 SENATE COMMITTEE ON Business & Industry
 BILLS BEING HEARD TODAY: SB 111

Name	Representing	Bill No.	Check One Support Oppose	
Mandi Madsen	The Prudential Floberg Realtors	SB 111	X	
Lynn L. Madsen		SB 111	X	
Georgs Brunz II	MONT. BANKERS	SB 111	X	
MARCIA ALLEN	Board of Realty Reg	SB 111	X	
HELEN GARRICK		SB 111	X	
Shirley Hansen	Flathead Rental Co	SB 111	V	
Sandra Magnan	Town & Country Prop	SB 111	X	
RONDA CARPENTER	Income Prop Owners Mgmt Inc	SB 111		X
Ken L. Fisher	Income Property Owners Mgmt Inc	SB 111		X
Rickey LINAFOLTER	Income Property Owners	SB 111		X
Tom Hopwood	Mt. Assoc. Realtors	SB 111	V	
Craig Van Hornum	Mt. Landlords Association Income Property Managers Assn	SB 111		X
JACK K. MOORE	CH. Bd of Realty Reg	SB 111	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Ms. Robson answered the businesses were generally service oriented and with a few manufacturing businesses also applying.

Closing by Sponsor:

Senator Jergeson closed asking for a Do Pass consideration on SB 161. He added he would like the title to read, "further define statewide loan funds," instead of "removing community support certification criteria".

EXECUTIVE ACTION ON SB 161

Motion/Vote:

Senator Rea moved SB 161 BE AMENDED as stated in the closing by the sponsor. MOTION CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Christiaens moved SB 161 DO PASS AS AMENDED. MOTION CARRIED UNANIMOUSLY with Senator Gage abstaining because he was absent during the vote.

EXECUTIVE ACTION ON SB 111

Discussion:

Senator Lynch wondered if the exemptions regarding relatives could be shortened. Mr. VanHorssen answered the language is from the Internal Revenue Code and should not be shortened because it acts as a reference for individuals who want to know if they would be in violation of SB 111.

Senator Lynch asked Bart Campbell if SB 111 would state a person who purports themselves to be a property manager must be licensed as such; and a person who is under one owner only, runs a motel or collects rents does not have to have a professional property managers license. Greg VanHorssen answered SB 111 applies to anyone in the business of renting, leasing, subleasing or other transfer of property interest. Mr. VanHorsen stated his reading of SB 111 as amended would include under the licensing requirement anyone who runs a motel, or hotel with more than four units. Mr. Campbell added that Mr. VanHorssen was not aware of the amendment which had been added earlier in Committee.

Mr. VanHorsen asked Mr. Campbell if the amendment he was referring to was to title 37 chapter 51. Mr. Campbell answered yes and it removed the people Mr. VanHorssen had specified.

Mr. Lynch asked what effect SB 111 would have on current law.

Mr. Campbell answered SB 111, if passed, will cover current law.

Senator Christiaens asked if a person who collects rents and takes deposits for a realty firm would be required to list and sell property and work under a real estate broker. Mr. VanHorsen answered that he was not prepared to address the question. Mr. Campbell added the passage of SB 111 would allow such a person to become a licensed property manager without having to become a realtor.

Senator Klampe asked if SB 111 needed to be amended to require realtors pass the property management test. Senator Lynch agreed with Senator Klampe.

Senator Rea asked if section 1 addressed the bankers and the assignment of repossessed property. Mr. Campbell answered the bank would operate as a trustee and anyone who is assigned the property would be considered an employee and covered under the amendments.

Senator Gage referred to the language in part 3 and asked if his 8 year old granddaughter could manage property under the new amendments. Mr. Campbell answered that was correct. Mr. VanHorsen added the liability would still be with the owner or licensee.

Motion/Vote:

Senator Bruski-Maus moved SB 111 BE AMENDED. MOTION CARRIED UNANIMOUSLY.

Discussion:

Senator Klampe asked the opinion of the Committee if the motion he wanted to make should be:

The people who are already realtors and property managers might be grandfathered in to SB 111.

The people who are already realtors and property managers should be required to take the property managers test.

Senator Lynch stated he felt that "what is good for the goose is good for the gander" and the realtors should be made to take the test.

Senator Gage added he agreed with Senator Lynch.

Senator Toews stated he had a problem with requiring the real estate brokers to take the test. He said real estate brokers are trained to do exactly what property managers do and all the information for managers is in the brokers test.

Senator Lynch referred to a real estate broker to whom he had talked who did not want to be a property manager and did not have the knowledge. He added if a real estate broker wanted to be a manager and they already had the knowledge, then they should be able to pass the test easily and would not argue about taking it.

Senator Klampe read a quote from someone on the Real Estate Board:

"Special training required for property managers you don't get as a realtor...Absolutely anyone new coming into the property management business should be trained."

Senator Klampe stated he felt this person was agreeing with what Senator Lynch had said earlier. He said realtors do not necessarily know how to do property management.

Bart Campbell asked Senator Klampe about his proposed amendments and stated there were two ways to amend SB 111. The first option was to strike the whole thing. The second option was to say, "a licensed real estate broker under the supervision of one may not act as a property manager without meeting the qualifications required of a property manager". Senator Klampe stated he thought it would be simpler to strike lines 17 through 22.

Mr. Campbell stated he felt the rewording of the section was a better idea and more concise. Senator Klampe agreed and asked the amendment be drafted.

Motion/Vote:

Senator Klampe moved SB 111 BE AMENDED. MOTION CARRIED 12 to 1 with Senator Toews voting NO.

Discussion:

Senator Christiaens asked the Committee to include in SB 111 a section regarding public administrators of property and the handling of an estate until the estate is settled. Mr. Campbell answered the amendment which states, "incidental to their duties" would cover the above situation.

Motion/Vote:

Senator Klampe moved SB 111 DO PASS AS AMENDED. MOTION CARRIED 11 to 2 with Senator Wilson and Senator Toews voting NO.

ROLL CALL

SENATE COMMITTEE Business & Industry DATE Jan 22 1993

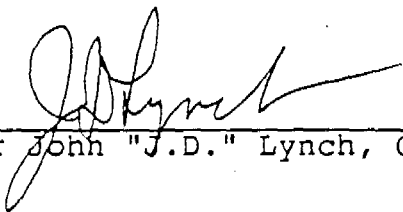
NAME	PRESENT	ABSENT	EXCUSED
Senator Lynch	✓		
Senator Christiaens	✓		
Senator Bruski-Maus	✓		<u>all</u>
Senator Gage	✓		
Senator Hager	✓		
Senator Harding	✓		
Senator Kennedy			✓
Senator Klampe	✓		
Senator Koehnke	✓		
Senator Mesaros	✓		
Senator Rea	✓		
Senator Toews	✓		
Senator Wilson	✓		

SENATE STANDING COMMITTEE REPORT

Page 1 of 2
January 23, 1993

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration Senate Bill No. 111 (first reading copy -- white), respectfully report that Senate Bill No. 111 be amended as follows and as so amended do pass.

Signed: 
Senator John "J.D." Lynch, Chair

That such amendments read:

1. Title, line 8.

Following: "PENALTIES;"

Insert: "CREATING EXEMPTIONS FROM REAL ESTATE AND PROPERTY
MANAGEMENT LICENSING;"

2. Page 4, line 14.

Following: "the"

Insert: "business of"

3. Page 5, lines 17 through 19.

Following: "a" on line 17

Strike: "dependent"

Insert: "relative"

Following: "estate"

Strike: the remainder of line 17 through "act];" on line 19

Insert: ", defined as follows:

(i) a son or daughter of the property owner or a descendant of either;

(ii) a stepson or stepdaughter of the property owner;

(iii) a brother, sister, stepbrother, or stepsister of the property owner;

(iv) the father or mother of the property owner or the ancestor of either;

(v) a stepfather or stepmother of the property owner;

(vi) a son or daughter of a brother or sister of the property owner;

(vii) a brother or sister of the father or mother of the property owner;

(viii) a son-in-law, daughter-in-law, father-in-law, mother-in-law, brother-in-law, or sister-in-law of the property owner;

or

(ix) the spouse of the property owner;"

4. Page 6, line 11.

Following: "duties;"

Strike: "or"

5. Page 6, line 16.

Following: "States"

Strike: "."

Insert: "; (h) a person who receives compensation from the owner of the real estate in the form of reduced rent or salary, unless that person holds signatory authority on the account in which revenue from the real estate is deposited or disbursed; or

(i) a person employed by the owner of the real estate if that person's property management duties are incidental to the person's other employment-related duties."

6. Page 6, line 19.

Following: "may"

Insert: "not"

7. Page 6, line 20.

Following: "meeting"

Strike: "any"

Insert: "the"

Following: "qualifications"

Insert: "to be a property manager"

-END-

said the state of Montana contracts with a bank in-state to handle what is called the state treasurer's account, which is the central checking account for the state of Montana. This bank contains the cash through the treasurer's office, and daily the board in conjunction with the treasurer's office, determines what the cash balance is in that bank, anticipates what the outstanding warrants will be, and based on that will sell and purchase securities.

Closing by Sponsor:

Sen. Jergeson closed stating that he had served on the Montana Board of Investments for four years. He said one of the things done by the board back in the 1970's, was the securities lending program handled by Chase Manhattan Bank in New York. He said there is a flaw in the law that the state of Montana has to go through a middleman to have this done by Chase Manhattan. He said with the Legislature trying to find ways of savings, this is the most efficient way to handle the state's financial matters. He said Rep. Pavlovich will carry the bill on the floor of the House.

EXECUTIVE ACTION ON SB 83

Motion: REP. PAVLOVICH MOVED SB 83 BE CONCURRED IN.

Discussion: None

Motion/Vote: Rep. Sonny Hanson called the question. Voice vote was taken. Motion CARRIED unanimously.

Vote: SB 83 BE CONCURRED IN. Motion CARRIED 18 - 0.

HEARING ON SB 111

Opening Statement by Sponsor:

SEN. JOHN HARP, Senate District 4, Kalispell, said this is the third time this bill has been introduced in Legislature. It creates a license for property managers who are currently licensed in Montana as realtors. There are people that want to be excluded from the requirements of realtors, and want their own testing, rules and regulations. SB 111 will create exemptions on page 1, lines 8 & 9, from real estate and property management licensing. On page 5, section 3, it lists the exemptions, i.e., relatives, or a person that leases no more than four residential units, etc. A property manager is a person who for a salary, commission, or compensation of any kind engages in the business of leasing, renting, subleasing, or other transfer of possession

of real estate belonging to others without transfer of the title to the property. EXHIBIT 4

Proponents' Testimony:

Helen Garrick, Real Estate Broker, Missoula, said she has been on the Board of Realtors for 8 years. They have received request for clemency from the brokerage license so the people can manage property, they don't want to list property nor sell property. Under the current statutes, it states that anyone who for a compensation or a fee, leases, rents, show or sell, must be a licensed real estate salesperson/broker. She said their position on the bill is to have the ability to give people a license to do what they want to do. Currently, the board does not have the ability to say these people can manage property without having a realtor's license. The board has had 13 requests in the last two years from people that just want to manage property, but said the numbers are down from previous years. The Education Council bill has passed the House, and if it passes on the other side, the people in the management of property will be included to receive specific education in their own industry. She said the board cannot emphasize property management education, because the majority of the five thousand licensee's in the state are not interested in property management. With this bill the board will still be responsible in the area of educating the property managers. She said there are brokers out there that will not let people that want to manage property hang their shingle in the broker's office.

Greg Van Horssen, Income Property Manager's Association, and the Montana Landlords Association, said between the two groups there are 1500 members who administer 53,000 rental units across the state. He said the organizations feel this bill will clear up the problem that currently exists in the area of rental properties, and remove some of the confusion that surrounds the distinction between a property manager and a real estate broker, and the requirements of each. The organizations support SB 111, and urged a do pass recommendation.

Tom Hopgood, Montana Association of Realtors, said the bill will allow property managers to become licensed without the need of becoming licensed as real estate brokers.

Mardi Madsen, property manager from Billings, and a licensed salesperson with the Prudential Floberg Realtors, reiterated the difficulty in finding real estate brokers willing to supervise salespeople interested in property management. Under the present system, she cannot operate as an independent property manager, and if she did, she could lose her sales license and face a fine. She distributed written testimony. EXHIBIT 1

Sherilee Hansen, Flathead Rental Agency, Bigfork, said she would like to see this bill passed so she would be legal. She is an owner and manager of a business that represents a lot of people

around the Flathead Lake area, and Swan Valley. She urged a do pass, and presented written testimony from Sandra K. Magnan of Kalispell. EXHIBIT 2

Leo Berry, representing Burlington Northern Railroad (BNR), said in reading the bill it is hard to believe that anyone is exempt anymore, but does catch some occasionally, i.e., BNR or Washington Corporation has a lot of property and hire employees to manage those properties. He spoke with Sen. Harp, who informed him it is not the intent of this bill to harm those types of people. He proposed an amendment to exempt a person that is employed on a salary basis by only one other person. SEE EXHIBIT 3

Opponents' Testimony:

None

Informational Testimony:

None

Questions From Committee Members and Responses:

Rep. Ellis asked Helen Garrick with all the exclusions, there must be a lot of people already covered by this bill, why is it necessary for anyone to be excluded? Ms. Garrick said that was the alternative. Idaho has excluded property management from their description of a real estate broker, so they have no ability to audit or control anyone that rents or leases. She said the board is not happy with all the exclusions either, they would have liked to have had it much tighter.

Rep. Ellis asked Sen. Harp to respond to the same question. Sen. Harp said if these people were excluded the consumers of Montana would be the ones that would suffer.

Rep. Knox asked Helen Garrick about the education program and if a criteria has been established yet? Ms. Garrick said not at this time. The board will pattern the criteria after the realty program. Rep. Knox asked if it would be a uniform statewide test? Ms. Garrick said yes.

Rep. Larson asked Helen Garrick what happens if someone has a real estate broker/salesman license acting as a property manager and complaints are brought against the property manager, will the realtor lose their license. Ms. Garrick said they will go through a hearing, then the board can make the decision to take the license and also charge a fine.

Rep. Simon asked about the number of hours the property manager will need to take to receive their license. Helena Garrick said probably 60 hours, the same as it is for brokers. Rep. Simon said these people do not want to be realtors, what is the number

of hours a property manager would have to take? **Ms. Garrick** the board will need input from the educators, the property managers and the real estate brokers. **Rep. Simon** asked if this is for continuing education or initial education? **Ms. Garrick** said both. **Grace Bergham, Executive Secretary for the Board of Realtors**, said the reason the hours are not specifically set at this time by statute is the board ran into a problem in developing a pre-licensing course for time-share. She said the requirements will be entirely different, and it will take experts other than a staff person to determine what knowledge is necessary to become a property manager. The program will need to be developed by rule so there will be more flexibility to address the availability of concerns and the educators involved to address the education.

Rep. Ellis asked **Sen. Harp** if this bill is to protect the consumer, what would those problems be? **Sen. Harp** said the primary purpose of the bill is to identify two different professions. **Rep. Ellis** asked if the committee could be assured that it will be easier for someone to be a licensed property manager than it is to be a licensed broker? **Sen. Harp** said from what he understands from the board, they would like to sit down with experienced people from this area, the licensed brokers and educators to decide the criteria.

Rep. Bachini asked **Greg Van Horssen** if he had any input from the management and landlord's association for the hours and education requirements? **Mr. Van Horssen** said not in this particular situation, but there is a bill before the Senate that creates a Board of Realty Education Council. The Education Council will provide input for education requirements in the various regulated areas. He said an amendment to that bill will be complimentary to this bill that will allow property managers to be a part of the Education Council. **Rep. Bachini** said the committee has been talking about consumer protection, could this be addressed in the bill to require property managers to be bonded? **Mr. Van Horssen** said this bill is to let the consumer know that there is a licensed profession that deals with property management only. With the licensed manager, the consumer should have some level of confidence that this individual has been educated and knows what is right or wrong with every aspect of property management.

Rep. Mills asked **Sen. Harp** about the bill on page 7, regarding the exemption of an individual who manages a housing complex for low income persons to be subsidized directly or indirectly from the state, doesn't the low income people need protection also? **Sen. Harp** said they are protected under current law which deals with HUD.

Chairman Benedict asked **Leo Berry** about the amendment he proposed, and stated it looks like it is left wide open for a person employed on a salary basis by only one person. On page 7, line 16, it exempts an individual's other employment-related duties. **Mr. Berry** said if an individual is managing property for

one individual on a salary basis, that would be true. He felt it didn't effect anyone like that. He said the intent of the bill is to set up a process where the public is protected, and trust accounts are properly cared for by auditing, etc. **Chairman Benedict** asked if this individual would have signatory authority? **Mr. Berry** said yes. **Chairman Benedict** said if this person has signatory authority, then why is this bill before the committee to create property manager's license? **Mr. Berry** said property managers hired by large corporations like Washington Corp., do not need the protection for a regulatory process. **Chairman Benedict** asked if it was ok to amend the amendment that would state "unless a person holds signatory authority on the account in which the revenue from the real estate is deposited or dispersed"? **Mr. Berry** said he did not have a problem with it.

Closing by Sponsor:

Sen. Harp closed.

EXECUTIVE ACTION ON SB 111

Motion: REP. BRANDEWIE MOVED SB 111 BE CONCURRED IN.

Discussion: Rep. Sonny Hanson moved Leo Berry's amendment without the additional signatory authority that **Chairman Benedict** proposed. EXHIBIT 3

Motion/Vote: Rep. Bachini called the question. Voice vote was taken. Motion CARRIED 15 - 3 with Rep. Stella Jean Hansen, **Chairman Benedict**, and Rep. Larson voting no.

Motion/Vote: REP. BRANDEWIE MOVED SB 111 BE CONCURRED IN AS AMENDED. Voice vote was taken. Motion CARRIED 17 - 1 with Rep. Larson voting no.

Vote: SB 111 BE CONCURRED IN AS AMENDED. Motion CARRIED 17 - 1.

HOUSE OF REPRESENTATIVES
53RD LEGISLATURE - 1993
BUSINESS AND ECONOMIC DEVELOPMENT COMMITTEE

ROLL CALL

DATE 3-3-93

NAME	PRESENT	ABSENT	EXCUSED
REP. ALVIN ELLIS	✓		
REP. DICK KNOX	✓		
REP. NORM MILLS	✓		
REP. JOE BARNETT	✓		
REP. RAY BRANDEWIE	✓		
REP. JACK HERRON	✓		
REP. TIM DOWELL	✓		
REP. CARLEY TUSS	✓		
REP. STELLA JEAN HANSEN	✓		
REP. BOB PAVLOVICH	✓		
REP. VICKI COCCHIARELLA	✓		
REP. FRITZ DAILY	✓		
REP. BOB BACHINI	✓		
REP. DON LARSON	✓		
REP. BRUCE SIMON	✓		
REP. DOUG WAGNER	✓		
REP. SONNY HANSON, VICE CHAIRMAN	✓		
REP. STEVE BENEDICT, CHAIRMAN	✓		

HR:1993

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HOUSE STANDING COMMITTEE REPORT

March 3, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Business and Economic Development report that Senate Bill 111 (third reading copy - blue) be concurred in as amended .

Signed: _____

Steve Benedict, Chair

And, that such amendments read:

Carried by: Rep. Pavlovich

1. Page 7, line 13.

Strike: "OR"

2. Page 7, line 16.

Following: "DUTIES" on line 16

Insert: "; or

(j) a person employed on a salaried basis by only one person"

-END-

Mr. Chairman and Members of the Committee:

My name is Mardi Madsen. I am a property manager from Billings. I am a licensed salesperson affiliated with The Prudential Floberg REALTORS. Don and Marilyn Floberg and Al Littler are my supervising brokers. I manage approximately 400,000 square feet of commercial property in downtown Billings in addition to residential housing. My firm is responsible for collecting over two million dollars of rent per year. I employ a staff of 10 and have a payroll of \$200,000 per year.

I support Senate Bill 111 from a desire to continue in the field of property management. The law presently reads that to be a property manager you must either be a broker or under broker supervision. To obtain a broker's license you must first obtain a salesperson license, hold this license for a minimum of two years and have at least five listings and five sales during that period. After completing that requirement you must complete coursework and pass the broker's test. For people like myself, who have made property management not sales our career choice, it is very hard to obtain a broker's license because of the sales and listing requirement. During the period I have held my sales license, I have not listed nor sold any property. I spend over 40 hours a week on management concerns. I do not have time to sell nor am I trained to be a salesperson. Most of my continuing education courses have been geared to property management. Property Management and sales are very different fields and deal with different matters.

I manage property for several large corporations and insurance companies. When they interview me concerning their properties, one of the questions they ask me is what credentials do I have that say I am qualified to be a property manager. When I tell them I hold a salesperson license their response is that they are hiring me to manage the property not to sell it. A property managers license from the State of Montana would give me some credibility.

It is becoming very difficult to find real estate brokers willing to supervise salespeople interested in property management. As I stated earlier, I am affiliated with The Prudential Floberg REALTORS. I pay a percentage of my income for their services. If they should choose not be my supervising brokers, I would be forced to find another broker or to close my business. Under the present system, I could not operate as an independent property manager. If I did choose to operate as an independent, I could lose my sales license and face a fine.

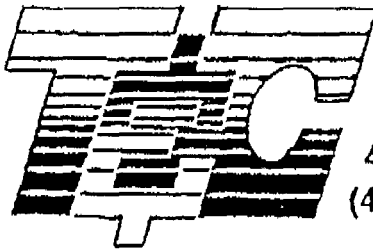
At the present time, there are several people in the state involved in property management who do not hold licenses of any kind. Many times people are operating outside the law because they can't find a supervising broker or want to be independent of a real estate firm. By making it possible to obtain a property management license, it could bring people who are working outside the law into the system where they can be monitored. Those of us holding licenses must submit our depository accounts for audit and must follow the law concerning timely deposits, fair housing and ADA requirements to name a few. How many discrimination suits could be avoided if everyone involved in property management received the proper training? Licensing with educational requirements would help bring more credibility to the profession and help protect the public.

It would also enable those who us who have been following the law to get out of a Catch 22 situation that the present law has created.

Thank you.

DATE 3-3-93

SB III



TOWN & COUNTRY PROPERTY MANAGEMENT, LTD.
43 Woodland Park Drive #11, Kallispell, Montana 59901
(406) 752-8106

March 2, 1993

House of Representatives
State of Montana
Helena, Montana

Dear Committee,

Town & Country Property Management, Ltd. is owned and run by my husband and myself. We are a small business that manages homes and apartments for a lot of owners that live out of state. We supply a service for many people that own property in Montana.

We support the new legislation for a property management license. Property management is a growing business opportunity for many people, but like myself, do not want to sell Real Estate. The new license would keep us better informed on Landlord-Tenant laws and help everybody do a better job.

Please vote YES for this legislation.

Sincerely,

Sandra K Magnan

Sandra K. Magnan
Owner

Amendments to Senate Bill No. 111
Third Reading Copy

Requested by Sen. Harp

Prepared by Susan B. Fox
February 5, 1993

EXHIBIT 3
DATE 3-3-93
SB 111

1. Page 7, line 13.
Strike: "OR"

2. Page 7, line 16.
Following: "DUTIES" on line 16
Insert: "; or

(j) a person employed on a salaried basis by only one
person"

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Business & Ec.

COMMITTEE

BILL NO.

SB 111

DATE March 3, 1993 SPONSOR(S) J. Harp

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
3524 Glenfinnan Rd Billings			
Mandi Macdon	Self	X	
Lynn L. Madsen		X	
3524 Glenfinnan Rd Billings	Self		
MARCIA ALLEN	BOARD OF REALTY REG	X	
HELED GARRICK		X	
Sandra HANSEN	Flathead Rental Agency	X	
Greg Van Hoven	IPRA/MLA	X	
Tom Hopwood	M.A.S.S.A. Realtis		
Karin Book	H.M.S.		
Erin Millipie	H.M.S.		
Sandra A. Madsen	H.M.S.		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.